IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 982 OF 1989 (O&M)
XOBJ NO. 5 -CII OF 1990
DATE OF DECISION: 09.8.2006

SOM NATH AND ANOTHER

....APPELLANTS

VERSUS

TARSEM CHAND AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. S.D. BANSAL, ADVOCATE
FOR THE APPELLANTS.
MR. L.M. SURI, SR. ADVOCATE WITH
MS. RADHIKA SURI, ADVOCATE
FOR RESPONDENT NO. 2.

JUDGEMENT

This is an appeal for enhancement of compensation filed by the parents of deceased Surinder Kumar arising out of MACT case No. 11 of 22.4.1988 decided by Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal').

Briefly the facts, as evident from the award of the Tribunal, are that Surinder Kumar, who was employed as driver with Tarsem Chand died in an accident while sitting on the back seat of the car, bearing No. DIA 6643, being driven by the owner thereof. The accident occurred because of rash and negligence driving of the car driven by Tarsem Chand, which struck against the truck coming from opposite side. As a result of the accident, Surinder Kumar died on the spot. The issue of negligence has been decided in favour of the claimants-appellants.

As far as the award of compensation is concerned, the claim made by the appellants was that deceased Surinder Kumar was employed with Tarsem Chand as driver and was earning Rs. 2,000/- per month and the appellants were dependent upon him being only son. His age was 22 years at the time of accident. However, the Tribunal assessed the emoluments of

deceased as Rs. 700/800 per month. Keeping in view the age and also the fact that in near future he would have married, the dependency was assessed at Rs. 300/- per month and applying a multiplier of 10, the compensation was assessed at Rs. 36,000/-. Besides, interest @ 12 % per annum from the date of claim application i.e. 20.4.1988 till realisation was also granted. Nothing more on account of funeral expenses etc. was granted. The claim of the appellants is that the deceased was their only son and bread earner in the family. Father of the deceased stated that the deceased was earning Rs. 2,000/- per month including all facilities and that he and his wife (mother of the deceased) were dependent on the income of the deceased. Besides this there was no other evidence on record. Even if it is assumed for the sake of arguments that the emoluments of driver, as assessed by the Tribunal, at the relevant time could be Rs. 700/- to Rs. 800/- per month, still the aspect of its increase in future had not been considered at all. It cannot be denied that the salary of the deceased would have certainly increased in future and calculating the dependency on the current level of income would be doing injustice, while calculating the compensation payable to the old parents of the deceased even if the salary of the deceased is assessed at Rs. 800/- per month as determined by the Tribunal at the relevant time. Keeping in view the future prospects and even the fact that he would have married in near future, still he would not have been absolved of his responsibility towards his parents. Keeping that in my view towards the parents, income of the deceased could very well be assessed at Rs.1200/- per month and dependency at Rs. 600/- per month. Keeping in view the age of the deceased and also the age of the claimants, who were 51 years and 48 years at the time of accident, in my opinion, application of multiplier 10, is in conformity with the law laid down by Hon'ble the Supreme Court in **Municipal Corporation Greater Bombay vs. Shri Laxman Iyer and another** (2004-1) 136 Punjab Law Reporter 446. Hence, the same does not require any change. Accordingly, the amount of compensation payable to the parents is determined at Rs. 72,000/-, to this a sum of Rs. 3,000/- added towards the funeral expenses and a sum of Rs. 10,000/- towards consortium, total amount of compensation being Rs. 85,000/-.

The insurance company has filed cross-objections raising the plea that as the insurance policy had been taken by the insured while playing fraud, the insurance company would not be liable to pay compensation. A perusal of the written statement filed by the insurance company before the Tribunal shows that neither any plea was raised nor any evidence to that effect was led. In the absence thereof, such plea cannot be permitted to be raised at this stage.

The additional amount of compensation shall be payable to the appellants alongwith interest @ 7.5 % per annum from the date of application till payment.

The appeal as well as the cross-objections are disposed of and award of the Tribunal is modified to the extent indicated above.

August 09, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**